IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

L.P.A. No.160 of 2007
Date of decision: August 17, 2007.

State of Punjab & Ors.

...**Appellant(s)**

v.

Shri Khushi Ram, ASI (Retd.)

...**Respondent(s)**

CORAM:HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SURYA KANT

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest.

Present: Shri A.G. Masih, Senior Deputy Advocate General, Punjab, for the Appellants.

ORDER

Surya Kant, J. - This Letters Patent Appeal under Clause X of the Letters Patent has been preferred by the State of Punjab and its authorities in the Police Department against the judgment dated December 07, 2006 passed by the Learned Single Judge whereby Civil Writ Petition No.92 of 1993 filed by the Respondent has been allowed and after quashing the order of his premature retirement, he has been held entitled to all the consequential benefits, including allowances, increments, seniority, etc.

[2]. The facts may be noticed briefly.

[3]. The Respondent was enrolled as a Constable in the Punjab Police on 18.4.1966 and upon passing of the requisite School Courses and also on the basis of his service record, he was, firstly, promoted as a Head Constable and thereafter, as an Assistant Sub-Inspector in January, 1990. The SSP, Jalandhar, however, vide an order dated 24.5.1991 retired the

Respondent from service compulsorily after opining that, "it is in public interest to retire him from service". The Respondent preferred a representation against the aforementioned action but the same was also turned down summarily. Both these orders were impugned by the Respondent in the above stated writ petition.

[4]. The Appellants, namely, the State of Punjab and its police authorities defended their action on the plea that under Rule 3(1)(a) of the Punjab Civil Services (Premature Retirement) Rules, 1975, the State Government has an absolute right to retire a government employee in public interest and that the adverse service record comprising Annexures R1/A to R4/A justified non-retention of the petitioner in service.

[5]. The Learned Single Judge summoned the service record of the Respondent and took notice of the admitted fact that there were no adverse remarks in any of his Annual Confidential Reports. Thereafter, the Learned Single Judge adverted to the principles laid down by the Apex Court in the case of **Baikuntha Nath Das v. Chief Distt. Medical Officer**, (1992)2 SCC 299 and **State of Punjab v. Gurdas Singh**, (1998)4 SCC 92 and further held that the power to retire a government employee compulsorily, though, is absolute, however, it is to be exercised in public interest only, namely, to weed-out dead wood in order to maintain efficiency in the service. It was further observed that since premature retirement is neither a punishment nor a stigma to attract provisions of Article 311(2) of the Constitution, the said power needs to be invoked with great circumspection as it entails drastic consequences of removal from service.

[6]. The Respondent's case was thereafter considered within those parameters and it was found that except a minor punishment of censure in the year 1983 and two warnings in the year 1983 and 1990, there was no other adverse material on the basis of which he could be branded either a 'dead wood' or some sort of corrupt official whose retention in service could be abhorrent to the public interest. As a consequence thereto, the order of premature retirement has been quashed and the Respondent has been held entitled to all the consequential benefits, thereby giving rise to this Appeal.

[7]. We have heard Shri A.G. Masih, learned Senior Deputy Advocate General, Punjab at length and perused the record.

[8]. It is well settled that in the process of judicial scrutiny, the High Court is entitled to interfere with an order of premature retirement if it is satisfied that the same has been passed mala-fidely, without any supporting material and/or in arbitrary exercise of power. It is equally well known that the power to retire a government servant in 'public interest' cannot be invoked as a measure to punish him for a specifically attributed misconduct. Similarly, while forming the opinion regarding retention in service of an employee, the government is required to consider the entire record of service, attaching more importance to the service record and performance during the later years.

[9]. Admittedly, the Respondent was promoted as a Head Constable on 9th June, 1980 and was confirmed in that rank in the year 1987. The minor punishment of censure and warning imposed upon him in the year 1983 (Annexures R2/A and R3/A) was, therefore, totally inconsequential and could not be relied upon to retire him prematurely in the year 1991, more so when notwithstanding these minor punishments, he had earned further promotion as an Assistant Sub-Inspector in January 1990. Similarly, the warning issued to the Respondent on 28th May, 1990 (Annexure R4/A) was wholly insufficient to dub him as dead wood or a corrupt official, especially when no such adverse comments find mention against his integrity in the Annual Confidential Report of the relevant year.

[10]. This leaves us with an intra-departmental report dated 23.5.1991 (Annexure R1/A) only sent by the SHO, Police Station: Sadar, Jalandhar to the SSP, Jalandhar. The said report appears to have ignited the SSP, Jalandhar to pass the order of premature retirement on the very next day, i.e. 24.5.1991 (Annexure P-1). The aforesaid report suggests that a woman of easy virtue was found loitering in an orchard of the village along with some boys, but as they grew in number and started consuming liquor, she tried to give them a slip. She was, however, caught by one of the servants in the orchard and brought to the Police Post: Garha where the Respondent was posted. As per the allegations, the Respondent obtained an application in writing from the woman to the effect that she had gone to the orchard for collecting fuel-wood and the servants at the orchard attempted to outrage her modesty. Thereafter, both the parties were let off by the

Respondent. Interestingly, the aforesaid report further mentions that, "ASI Khushi Ram has married a notorious woman who is residing on rent in kothi No.406 in Phase I, Urban Estate". The author of the report accordingly recommended that it is not proper to keep ASI Khushi Ram at Police Post Garha.

[11]. If the allegations contained in the report Annexure R1/A were true, it was undoubtedly a case of commission of misconduct on the part of the Respondent for which the appropriate recourse for the authorities was to initiate disciplinary action as per the rules. The only other inference could be that the report was made to get the Respondent transferred from the Police Post Garha. The said report, which was neither communicated to the Respondent nor was he given an opportunity to explain his conduct in relation to the allegations contained therein, could not have been relied upon to retire the Respondent prematurely.

[12]. For the reasons afore-stated, we are satisfied that the view taken by the Learned Single Judge warrants no interference.

[13]. Dismissed.

August 17, 2007. [**Surya Kant**] **[Vijender Jain]**
kadyan **Judge** **Chief Justice**